

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

REPORT AND RECOMMENDATION

v.

22-CR-00018(LJV)(JJM)

ERIC CUSIMANO,

Defendant.

At District Judge Lawrence J. Vilardo's request, and with the defendant's consent, the above case was referred to me to take the defendant's plea of guilty and to conduct an allocution pursuant to Fed. R. Crim. P. ("Rule") 11 for a Report and Recommendation. The following is my Report and Recommendation as to the defendant's plea of guilty to Count 1 of the Indictment [13].

On January 5, 2024 defendant entered a plea of guilty in this case. In accordance with my oral recommendation at the close of the plea proceeding, it is my recommendation that defendant's plea of guilty accords with the requirements of Rule 11, and that defendant should therefore be adjudged guilty of the offense to which the guilty plea was offered.

The time from today until Judge Vilardo rules on this Report and Recommendation is excluded from the Speedy Trial Act calendar pursuant to 18 U.S.C. §3161(h)(1)(G).


Unless otherwise ordered by Judge Vilardo, any objections to this Report and Recommendation must be filed with the clerk of this court by January 19, 2024. Any requests for an extension of this deadline must be made to Judge Vilardo. A party who "fails to object

timely . . . waives any right to further judicial review of [this] decision”. Wesolek v. Canadair Ltd., 838 F. 2d 55, 58 (2d Cir. 1988); Thomas v. Arn, 474 U.S. 140, 155 (1985).

Moreover, the district judge will ordinarily refuse to consider *de novo* arguments, case law and/or evidentiary material which could have been, but were not, presented to the magistrate judge in the first instance. Patterson-Leitch Co. v. Massachusetts Municipal Wholesale Electric Co., 840 F. 2d 985, 990-91 (1st Cir. 1988).

The parties are reminded that, pursuant to Rule 59(c)(2) of this Court’s Local Rules of Criminal Procedure, “[w]ritten objections . . . shall specifically identify the portions of the proposed findings and recommendations to which objection is made and the basis for each objection, and shall be supported by legal authority”, and pursuant to Local Rule 59(c)(3), the objections must include “a written statement either certifying that the objections do not raise new legal/factual arguments, or identifying the new arguments and explaining why they were not raised to the Magistrate Judge”. Failure to comply with these provisions may result in the district judge’s refusal to consider the objection.

Dated: January 5, 2024


JEREMIAH J. MCCARTHY
United States Magistrate Judge